UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-5613
Summary Calendar

JOSE M. MENCHACA,

Plaintiff-Appellant,

versus

ANTHONY FRANK, Postmaster General, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Western District of Texas
(SA-92-CV-97)

(May 25, 1993)

Before POLITZ, Chief Judge, DUHÉ and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Jose Menchaca appeals the dismissal of his claims against the United States Postal Service and several individual defendants. Finding no error, we affirm.

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

Menchaca, a postal worker, was injured in August 1991 in a traffic accident while driving a mail delivery truck. The Office of Workers' Compensation Program accepted his claim for compensation and authorized medical treatment. OWCP refused to authorize further compensation and treatment after May 1992.

Menchaca sued the postal service and various individual defendants, apparently for discontinuing his compensation and requiring his return to work. Proceeding *pro se*, he claimed violations of Title VII,[1] the Rehabilitation Act,[2] and the Federal Tort Claims Act.[3] The district court dismissed all claims, finding the FTCA claim barred because Menchaca received compensation benefits, dismissing the Title VII and Rehabilitation Act claims for failure to exhaust administrative remedies, and dismissing the claims against the individual defendants for failure to state a claim. Menchaca timely appealed.

Analysis

We review *de novo* dismissals for lack of subject matter jurisdiction under Rule 12(b)(1)[4] or for failure to state a claim

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[1] 42 U.S.C. §§ 2000e *et seq.*

[2] 29 U.S.C. §§ 791 *et seq.*

[3] 28 U.S.C. §§ 2671 *et seq.*

[4] See **Williamson v. Tucker**, 645 F.2d 404 (5th Cir.), cert. denied, 454 U.S. 897 (1981). When the court relies on the

under Rule 12(b)(6).[5]

Under the Federal Employee's Compensation Act,[6] the liability of the United States under FECA, with respect to the injury or death of an employee, "is exclusive and instead of all other liability of the United States."[7] FECA's exclusive liability provision "was designed to protect the government from suits under statutes such as the Federal Tort Claims Act."[8] Thus, to the extent that Menchaca's claims arise from the work-related injury for which he received compensation, his exclusive remedy is under FECA;[9] the district court correctly found Menchaca barred from bringing FTCA claims based upon those injuries.[10] Any claims under

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pleadings and undisputed facts, "our review is limited to determining whether the district court's application of the law is correct." **Id**. at 413.

[5] **Guidry v. Bank of LaPlace**, 954 F.2d 278 (5th Cir. 1992).

[6] 5 U.S.C. §§ 8101 *et seq.*

[7] 5 U.S.C. § 8116(c).

[8] **Lockheed Aircraft Corp. v. United States**, 460 U.S. 190 (1983).

[9] The district court would also have no jurisdiction over a claim by Menchaca regarding the decision to cease his compensation benefits. Under FECA, the Secretary of Labor may review a determination regarding benefits, but the action of the Secretary under FECA is "not subject to review by another official of the United States or by a court by mandamus or otherwise." 5 U.S.C. § 8128.

[10] **Benton v. United States**, 960 F.2d 19 (5th Cir. 1992); **Grijalva v. United States**, 781 F.2d 472 (5th Cir.), cert. denied,

the FTCA also properly could be dismissed for failure to exhaust administrative remedies.[11] Menchaca's claims under Title VII and the Rehabilitation Act suffer the same defect -- failure to exhaust administrative remedies.[12]

Menchaca's claims against the various individual defendants also founder. The United States is the only proper party defendant in suits under the FTCA.[13] The proper defendant in a Title VII or Rehabilitation Act claim is the head of the employing agency[14] -- in this case the Postmaster General. The individual defendants are thus not proper parties and Menchaca has failed to state claims for which relief could be granted against them.

Appellees have filed a motion to strike extraneous portions of

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479 U.S. 822 (1986).

[11] **Gregory v. Mitchell**, 634 F.2d 199 (5th Cir. 1981); 28 U.S.C. § 2675(a) (exhaustion of administrative remedies is jurisdictional prerequisite to bringing an FTCA claim).

[12] **Pacheco v. Rice**, 966 F.2d 904 (5th Cir. 1992) (Title VII); **Prewitt v. United States Postal Service**, 662 F.2d 292 (5th Cir. 1981) (Rehabilitation Act).

Menchaca submitted with his original complaint a final agency decision on an unrelated EEO claim. This prior complaint does not demonstrate administrative exhaustion because the issues raised in the instant suit did not arise from the earlier complaint. See **Eastland v. Tennessee Valley Authority**, 553 F.2d 364, 372 (5th Cir.), cert. denied, 434 U.S. 985 (1977).

[13] 28 U.S.C. § 2674; **Vernell v. United States Postal Service**, 819 F.2d 108 (5th Cir. 1987).

[14] **Honeycutt v. Long**, 861 F.2d 1346, 1349 (5th Cir. 1988).

Menchaca's record excerpts and references thereto in his brief because they present evidence which was not before the district court. In resolving this appeal we consider only whether, based upon the record before it, the district court properly dismissed Menchaca's claims. We find that it did.

We therefore GRANT appellees' motion to strike and AFFIRM in all respects the judgment of the district court.